

LARRY SMITH,)
)
Petitioner,)
)
v.) No. 4:10CV0007 RWS
)
DON ROPER,)
)
Respondent.)

This matter is before the Court on petitioner’s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court will summarily dismiss the petition because it is successive.

Petitioner was found guilty by a jury of first-degree murder and armed criminal action. On December 7, 1988, the Circuit Court for the City of St. Louis sentenced petitioner to life without parole plus ten years' imprisonment, to be served consecutively. Petitioner previously challenged this judgment in the case Smith v. Delo, 4:92CV260 SNL (E.D. Mo.). The Court dismissed the case because the grounds raised in the petition were either non-cognizable or procedurally barred. Id. (doc. nos. 10, 12). Following dismissal, the United States Court of Appeals for the Eighth Circuit denied petitioner's application for a certificate of probable cause to

appeal. Id. (doc. nos. 16, 18). Petitioner now seeks to challenge the same state court judgment.

Rule 4 of the Rules Governing § 2254 Cases provides that a district court shall summarily dismiss a § 2254 petition if it plainly appears that the petitioner is not entitled to relief.

To the extent that petitioner seeks to relitigate claims that he brought in his original petition, those claims must be dismissed pursuant to 28 U.S.C. § 2244(b)(1). To the extent that petitioner seeks to bring new claims for habeas relief, petitioner must obtain leave from the United States Court of Appeals for the Eighth Circuit before he can bring those claims in this Court. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not been granted leave to file a successive habeas petition in this Court. And the AEDPA's restriction on filing successive petitions is retroactively applicable to cases that were filed before the AEDPA was enacted. See, e.g., Daniels v. United States, 254 F.3d 1180, 1188 (10th Cir. 2001). As a result, the petition will be summarily dismissed.


Accordingly,

IT IS HEREBY ORDERED that petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that no certificate of appealability will issue.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 4th day of February, 2010.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE